

Claims 12-17 and 19-21 have again been rejected under 35 U.S.C. § 103 as unpatentable over Klein et al. in view of Krauss et al. and Erdtmann. Applicants traverse this rejection.

The claimed apparatus of the present invention is focused on the customizing of a facial foundation product at point of sale to a customer. Essential to the invention is a formulation machine with at least four dispensers each containing a differently colored cosmetic chemical composition. More specifically, each of the cosmetic chemical compositions are respectively red, yellow, black and white in color. By programmed dosing of combinations of these colored chemical compositions, the perfect skin matched facial foundation product is provided to the customer at point of sale.

The Examiner has clarified the Klein et al. reference. It is introduced for the concept of dispensing a liquid product and of teaching four different containers.

Apparently the Examiner agrees that Klein et al. does not disclose or suggest that at least four dispensers contain differently colored cosmetic chemical compositions, being respectively red, yellow, black and white.

It also must be remembered that Klein et al. is an invention focused on hair treatment compositions rather than facial foundation products.

Krauss et al. was introduced for the concept of adding cosmetic additives to a cosmetic base. The Examiner argues that "since the disclosure teaches adding selected additives to cream bases ... it is well known in the cosmetic art that facial foundations can be in cream bases."

Evident again is that the Examiner has found no teaching for the use of separate red, yellow, black and white colored cosmetic chemical compositions, each being in a respective one of four dispensers. Even conceding that Krauss et al. encompasses facial foundations, there is no disclosure on how such foundations are to be dispensed or formulated. The several and specific color pots are neither disclosed nor suggested.

Erdtmann was cited as pertinent to the concept of dispensing a facial foundation matching an individual consumer's skin type.

Similar to the other two references, Erdtmann discloses nothing with respect to requiring four dispensers each with a respective red, yellow, black and white colored cosmetic chemical composition.

Absent any disclosure of the separate red, yellow, black and white cosmetic chemical compositions in four respective dispensers, the combination of Klein et al. in view of Krauss et al. and Erdtmann could not possibly render the invention obvious. The Examiner simply has not set forth a prima facie case of obviousness, one of the key aspects of the invention not being disclosed by any of the references.

Claim 20 specifies that the apparatus further includes a means to mark with an identification mark each customized facial foundation product. According to claim 21, the identification mark is a bar code. Thus, many thousands of customers will each have their own unique identification mark correlating to their own unique skin shade. Once measured for an optimal formula (shade), a customer need not even return to the store counter but could by mail simply order that unique shade.